

# STATE OF NEW YORK

5911

2025-2026 Regular Sessions

## IN ASSEMBLY

February 24, 2025

Introduced by M. of A. EACHUS -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to regulating vapor products; to amend the state finance law, in relation to establishing the vapor products compliance fund; and to repeal certain provisions of the public health law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1399-mm-1 of the public health law is REPEALED.  
2 § 2. This act shall be known and may be cited as the "vapor products  
3 regulatory act of 2025".  
4 § 3. The public health law is amended by adding a new article 13-I to  
5 read as follows:

6 ARTICLE 13-I  
7 VAPOR PRODUCTS REGULATORY ACT

8 Section 1399-xx. Purpose of article.  
9 1399-yy. Definitions.  
10 1399-zz. Manufacturing, labeling, marketing, and safety  
11 requirements.  
12 1399-aaa. Penalties and suspension; enforcement.  
13 1399-bbb. Exceptions.  
14 § 1399-xx. Purpose of article. The purpose of this article is to  
15 protect public health and safety by ensuring the safety and security of  
16 e-liquid and vapor products manufactured for sale in this state, ensur-  
17 ing that e-liquid and vapor products manufactured or sold in this state  
18 conform to appropriate standards related to labeling, marketing, and  
19 appearance, ensuring that e-liquid and vapor products are not contam-  
20 inated by the inclusion of ingredients or other substances that might  
21 pose unreasonable threats to public health and safety, and ensuring that

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 e-liquid and vapor products manufactured or sold in this state are not  
2 targeted to appeal to minors.

3 § 1399-yy. Definitions. As used in this article:

4 1. "Adult-only store" means a retail store operated by a retail dealer  
5 or vapor products dealer to which admission is restricted to persons  
6 twenty-one years of age or older and which posts signage on the entrance  
7 to such store which states "MINORS UNDER 21 AND UNACCOMPANIED BY AN  
8 ADULT ARE NOT ALLOWED ON THE PREMISES."

9 2. "Advertise" or "advertising" means the publication or dissemination  
10 of an advertisement.

11 3. "Advertisement" includes any written or verbal statement, illus-  
12 tration, or depiction which is calculated to induce sales of vapor  
13 products, including any written, printed, graphic, or other material,  
14 billboard, sign, or other outdoor display, public transit card, other  
15 periodical literature, publication, or in a radio or television broad-  
16 cast, or in any other media; except that such term shall not include:

17 (a) Any label affixed to any e-liquid or vapor product, or any indi-  
18 vidual covering, carton, or other wrapper of such bottle that consti-  
19 tutes a part of the labeling under provisions of this article.

20 (b) Any editorial or other reading material in any periodical or  
21 publication or newspaper for the publication of which now money or valu-  
22 able consideration is paid or promised, directly or indirectly, by any  
23 licensee, and which is not written by or at the direction of the licen-  
24 see.

25 4. "Distributor" means a person who has a permit that authorizes such  
26 person to:

27 (a) distribute, sell, barter, or exchange e-liquid or vapor products  
28 in this state for the purpose of resale; or

29 (b) purchase e-liquid or vapor products directly from a manufacturer  
30 or distributor for the purpose of resale in this state.

31 5. "E-liquid" means a solution that: (a) contains propylene glycol,  
32 vegetable glycerin, nicotine, nicotine salts and/or flavorings; and (b)  
33 is intended to be used in a vapor product. Provided, however, that e-li-  
34 quid does not include cannabis, THC, CBD, or hemp as defined under the  
35 laws of this state.

36 6. "Health-related statement" means any statement related to health,  
37 including statements of a curative or therapeutic nature that, expressly  
38 or implicitly, suggest a relationship between the consumption of e-li-  
39 quids or vapor products and health benefits or effects on health.

40 7. "Manufacturer" means a person located inside this state, including  
41 any re-packer and/or re-labeler, that is engaged in manufacturing e-li-  
42 quids or vapor products.

43 8. "Manufacturing" means the process by which an e-liquid or vapor  
44 product is fabricated, assembled, packaged or labeled, and sealed in  
45 final packaging intended for customer use.

46 9. "Market" or "marketing" means any act or process of promoting or  
47 selling vapor products, including, but not limited to, sponsorship of  
48 sporting events, point-of-sale advertising, and promotions or products  
49 specifically designed to appeal to certain demographics.

50 10. "Minor" means an individual who is less than twenty-one years of  
51 age.

52 11. "Packaging" means any receptacle that contains a finished e-liquid  
53 or a vapor product.

54 12. "Retailer" means a person, other than a manufacturer or distribu-  
55 tor, who in the ordinary course of the person's regular trade or busi-  
56 ness:

1 (a) acquires any form of e-liquid or vapor products for the purpose of  
2 resale to an end consumer; and

3 (b) sells an e-liquid or a vapor product to another person for money  
4 or other consideration.

5 13. "Sale" or "sell" means to exchange or otherwise furnish any e-li-  
6 quid or vapor product to any individual of legal age for monetary value.

7 14. "Social media" or "social media platform" means an online forum,  
8 website or application that satisfies each of the following criteria:

9 (a) allows users to upload content or view the content or activity of  
10 other users;

11 (b) employs algorithms that analyze user data or information on users  
12 to select content for users; and

13 (c) has any of the following features:

14 (i) infinite scrolling;

15 (ii) push notifications or alerts sent by the online forum, website,  
16 or application to inform the user about specific activities or events  
17 related to the user's account;

18 (iii) displays personal interactive metrics that indicate the number  
19 of times other users have clicked a button to indicate their reaction to  
20 content or have shared or reposted the content;

21 (iv) auto-plays video or videos begin to play without the user first  
22 clicking on the video or play button to view such video; or

23 (v) has live-streaming functions that allow users or advertisers to  
24 broadcast live video content in real-time.

25 15. "Tamper-evident package" means a package having at least one indi-  
26 cator or barrier to entry that, if breached or missing, can reasonably  
27 be expected to provide visible evidence to consumers that tampering has  
28 occurred.

29 16. "Vapor product" means an electronic device that converts e-liquid  
30 to a vapor intended for inhalation that may or may not contain e-liquid.

31 § 1399-zz. Manufacturing, labeling, marketing, and safety require-  
32 ments. 1. Manufacturers, distributors, and retailers shall comply with  
33 the following requirements:

34 (a) E-liquid bottles must use a child proof cap that has the child  
35 resistant effectiveness set forth in the federal poison prevention pack-  
36 aging standards, 16 CFR 1700.15(b)(1), as amended from time to time.

37 (b) E-liquid bottles or vapor products that contain e-liquid must use  
38 a tamper-evident package. Such tamper-evident package shall be designed  
39 to remain intact when handled in a reasonable manner during the manufac-  
40 ture, distribution, and retail display of the e-liquid bottle.

41 (c) Labels on e-liquid bottles must meet the nicotine addictiveness  
42 warning statement requirements set forth in 21 CFR 1143.3, as amended  
43 from time to time.

44 (d) Packages containing an e-liquid bottle or vapor product must  
45 contain the name of the manufacturer or distributor and shall have the  
46 address of such manufacturer or distributor firmly affixed to or printed  
47 on the package for tracking purposes. A scannable bar code or QR code  
48 located on the package may meet this requirement.

49 2. A manufacturer, distributor, or retailer of e-liquids or vapor  
50 products shall not sell or offer for sale any e-liquid or vapor product  
51 that:

52 (a) Uses in the labeling or packaging of the product or in its market-  
53 ing materials:

54 (i) the terms "candy", "candies", or variants in spelling, except for  
55 use in the name of a licensee, including the licensee's doing business  
56 as name;

1 (ii) the terms "bubble gum", "cotton candy", "gummy bear", "gummy  
2 worm", "lollipop", or variations of such terms, except for use in the  
3 name of a licensee, including the licensee's doing business as name;

4 (iii) any other terms or phrases which the department has, by regu-  
5 lation, determined has a disproportionate appeal to minors, provided  
6 that such regulation shall not apply to: (1) terms relating to the name  
7 of a type of fruit; (2) the term "mint" or terms that relate to a type  
8 of mint; (3) the terms "menthol" or "ice"; or (4) terms containing the  
9 word "tobacco";

10 (b) Uses, in the labeling or design of the product or its packaging,  
11 or in its marketing materials, images of or references to cartoons,  
12 cartoon characters, superheroes, television shows, video games, and  
13 movies, or other similar characters or references, that have been prima-  
14 riarily used to market products to minors;

15 (c) Uses, in the labeling or design of the product, or its packaging,  
16 or in its marketing materials, trade dress, trademarks, or other related  
17 imagery that imitate or replicate trade dress, trademarks, or other  
18 imagery of food brands or products that have been primarily marketed to  
19 minors, including but not limited to: brands of breakfast cereals, cook-  
20 ies, juice drinks, soft drinks, ice creams, and frozen pops; or

21 (d) Uses, in the labeling or design of the product or its packaging,  
22 or in such products marketing materials, trade dress, trademarks, or  
23 other related imagery that imitate or replicate trade dress, trademarks,  
24 or other imagery of school supplies.

25 3. A manufacturer, distributor or retailer of e-liquids or vapor  
26 products shall not advertise or market any vapor product except in the  
27 following manner:

28 (a) Advertisements may not be materially false or untrue and any  
29 statement contained therein must be consistent with the e-liquid's or  
30 vapor product's labeling;

31 (b) Advertisements may not contain any health or therapeutic claims;

32 (c) Advertisements on billboard signs must not be within one thousand  
33 feet of a primary or secondary school, playground, or youth center;

34 (d) Advertisements for e-liquids or vapor products shall be prohibited  
35 on social media as defined in this article unless the recipient of the  
36 content has been age verified by a verified age gating process.

37 § 1399-aaa. Penalties and suspension; enforcement. 1. The department  
38 may assess a civil penalty against a manufacturer, distributor, or  
39 retailer for a violation of this article in an amount not to exceed five  
40 thousand dollars. A civil penalty may be assessed in addition to other  
41 penalties authorized pursuant to this article.

42 2. The attorney general is authorized to investigate and enforce  
43 violations of subdivision two of section thirteen hundred ninety-nine-zz  
44 of this article. Upon determining that a manufacturer, distributor, or  
45 retailer has violated any provision of such subdivision, the attorney  
46 general may bring a civil action in any court of competent jurisdiction  
47 to: (a) seek injunctive relief restraining or enjoining any manufactur-  
48 er, distributor, or retailer from continuing to engage in activities  
49 that violate subdivision two of section thirteen hundred ninety-nine-zz  
50 of this article; (b) recover civil penalties of up to ten thousand  
51 dollars per violation; or (c) obtain appropriate relief to protect the  
52 public interest.

53 3. Civil penalties collected under this section shall be deposited in  
54 the vapor products compliance fund established pursuant to section nine-  
55 ty-nine-ss of the state finance law.

1 § 1399-bbb. Exceptions. The provisions of this article shall not apply  
2 to any vapor products dealer, or any agent or employee of a vapor  
3 products dealer, who sells or offers for sale, or who possesses with  
4 intent to sell or offer for sale, any flavored vapor product intended or  
5 reasonably expected to be used with or for consumption of nicotine in an  
6 adult-only store.

7 § 4. The state finance law is amended by adding a new section 99-ss to  
8 read as follows:

9 § 99-ss. Vapor products compliance fund. 1. There is hereby estab-  
10 lished in the joint custody of the comptroller and the commissioner of  
11 taxation and finance a fund to be known as the "vapor products compli-  
12 ance fund".

13 2. Such fund shall consist of revenues received by the state pursuant  
14 to section thirteen hundred ninety-nine-aaa of the public health law and  
15 all other moneys appropriated, credited, or transferred thereto from any  
16 other fund or source pursuant to law.

17 3. All moneys of the vapor products compliance fund, following appro-  
18 priation by the legislature, shall be made available for the purposes of  
19 enforcement of the provisions of article thirteen-I of the public health  
20 law.

21 4. Moneys shall be payable from the fund on the audit and warrant of  
22 the comptroller on vouchers approved and certified by the commissioner  
23 of health.

24 § 5. This act shall take effect on the ninetieth day after it shall  
25 have become a law.